

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC.,

Plaintiff,

v.

AIMJUNKIES.COM; PHOENIX
DIGITAL GROUP LLC; DAVID
SCHAEFER; JORDAN GREEN;
JEFFREY CONWAY; and JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

**[PROPOSED] ORDER GRANTING
PLAINTIFF BUNGIE, INC.'S MOTION
FOR DISCOVERY SANCTIONS AND
TO COMPEL DISCOVERY RESPONSES**

THIS MATTER came before the Court for hearing on Plaintiff Bungie, Inc.'s ("Bungie") Motion for Discovery Sanctions and to Compel Discovery Responses (the "Motion"). Now, having reviewed the parties' briefing, declarations, and exhibits attached thereto, it is hereby ORDERED that Bungie's Motion is GRANTED, it is further:

ORDERED that, because Defendants deleted relevant evidence after they had a duty to preserve such evidence, an adverse inference is entered regarding the content of and reason for deleting the following:

1. financial documents and data related to the AimJunkies.com website that would have shown how many copies of Defendants' *Destiny 2* cheat software (the "Cheat Software") were sold;

[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

2. records relating to the Cheat Software, the cheat software loader, and the AimJunkies.com Terms of Service from the AimJunkies.com website;
3. marketing and promotional materials relating to the Cheat Software, including those featuring images from Bungie's *Destiny 2* video game; and
4. the C, D, F, and H drives from Mr. May's computer that he alleges Bungie accessed.

It is also further:

ORDERED that Bungie is awarded monetary sanctions for Defendants' spoliation to the extent not duplicative of those sanctions imposed in Arbitrator Cox's Final Award (Dkt. No. 89-1) and for Defendants' deposition conduct;

ORDERED that Bungie shall submit a declaration accounting for the attorneys' fees and other costs expended in connection with Defendants' spoliation and deposition conduct, including fees expended preparing for and conducting the March 20, 2023 deposition of Phoenix Digital's corporate representative and in connection with Plaintiff Bungie Inc.'s Motion for Discovery Sanctions and to Compel Discovery Responses;

ORDERED that Defendants shall produce all documents responsive to Bungie's Requests for Production Nos. 15 and 25 to Mr. Schaefer and Request for Production No. 28 to Phoenix Digital, and Phoenix Digital shall supplement its answer to Bungie's Interrogatory No. 7 to Phoenix Digital to identify (1) all Bitcoin wallet IDs used in connection with Phoenix Digital or AimJunkies.com, to pay Andreas Banek or receive payment from Mr. Banek, or used in connection with the Cheat Software, and (2) any other payment accounts that have been used to pay Mr. Banek and/or Mr. May.

DATED this _____ day of _____, 2023.

[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 2

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Honorable Thomas S. Zilly
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ William C. Rava

William C. Rava, WSBA No. 29948

Christian W. Marcelo, WSBA No. 51193

Jacob P. Dini, WSBA No. 54115

Perkins Coie LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Email: WRava@perkinscoie.com

CMarcelo@perkinscoie.com

JDini@perkinscoie.com

Attorneys for Plaintiff Bungie, Inc.

[PROPOSED] ORDER
(No. 2:21-cv-811-TSZ) – 3

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000